TRADEMARK
Docket No. 032236.9040

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

RECOTON AUDIO CORPORATION, Opposer, v. ADVENT NETWORKS, INC. Applicant.	01-13-2003 U.S. Patent & TMOfc/TM Mail Rcpt Dt. #10 Opposition No. 91150749 Serial No. 76/033,895 Mark: ADVENT NETWORKS

Box TTAB NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

APPLICANT'S OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Applicant Advent Networks, Inc. ("Advent Networks") opposes the facially defective Motion for Summary Judgment Opposer Recoton Audio Corporation ("Recoton") has filed in connection with its ill-founded opposition against Applicant's trademark application for the ADVENT NETWORKS mark. Recoton's essentially *one* paragraph Motion for Summary Judgment should be found defective for a number of independent reasons. First and foremost, Opposer has failed to meet its burden to establish that no materials issues of disputed fact exist with regards to its claim of likelihood of confusion, failing to reference even one single case in support of its motion for summary judgment. Indeed, Recoton does not even meet the simplest requirement of Section 528.01 of the TBMP which provides that "[a] party moving for summary judgment should specify in its brief in support of the motion, the material facts which are

undisputed."[1] Second, Recoton has failed to establish any likelihood of confusion particularly in the face of the differences in the parties' respective marks, Advent Networks' goods and Recoton's goods, and the channels of trade through which the parties' respective goods travel. Third, Recoton conspicuously fails to mention, let alone address, that its use of the ADVENT mark literally coexists with multiple third party uses of the mark ADVENT, including other registrations for marks containing the word ADVENT for consumer-oriented services and products, necessarily limiting the scope of any rights that Recoton may hold in the ADVENT mark and preventing any confusion with the ADVENT NETWORKS mark.

Each of these reasons provide more than sufficient grounds to find that the pending summary judgment motion is baseless, and that there remain disputed issues of material facts sufficient to preclude summary judgment here.

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[1] Recoton's motion relies primarily on unsubstantiated conjecture and inadmissible hearsay. For example, Recoton curiously references its trademark registrations outside the United States to substantiate that its mark is well known, but only attaches a list of these purported registrations without specifying the goods or services for which they have been obtained, or providing even a copy of the registrations (Kennedy Aff., Attach. B). Apart from the immateriality of registrations outside the United States to this proceeding (*see Societe Anonyme Marne et Champagne v. Myers*, 250 F.2d 374, 377 (C.C.P.A. 1957), this evidence remains unsubstantiated and inadmissible. Similarly, Recoton alleges in the Kennedy Affidavit that its mark is "well-known in the home and mobile consumer market... as evidenced by the article(s) attached hereto and made a part hereof as Attachment 'F'" (Kennedy Aff. ¶ 8). Attachment F, however, consists solely of Recoton's own self-serving press releases, which on their face hardly evidence that Recoton's ADVENT mark is "well-known." Further, Recoton references an office action against an application it filed for the mark ADVENT (Kennedy Aff. ¶ 13), but it does not provide a copy of that Office Action or its response but only its self-serving characterizations. Similarly, Recoton references the office action against Advent Network's mark ADVENT, but does not attach a copy of that Office Action. Beyond that Advent Network's ADVENT mark is not at issue here, these allegations lack the proper support to qualify as admissible evidence. *See* Fed. R. Civ. P. 56(e); *BL Cars Ltd. v. Puma Industria de Veiculos S/A*, 221 U.S.P.Q. 1018, 1019 (T.T.A.B. 1983) (factual statements could not be considered in the absence of properly submitted evidence to support them). Thus, Advent Networks moves to strike this so-called evidence as unsubstantiated and inadmissible.

STATEMENT OF FACTS

On April 26, 2000, Advent Networks filed its intent to use trademark application, which is the subject of this opposition. The Examining Attorney approved Advent Networks' trademark application for ADVENT NETWORKS for "computer software for telecommunications purposes, namely, for a digital interface for connecting home content accessing devices with a global computer network over a hybrid fiber coaxial network for the delivery of digital information in a high speed electronic format including video, text, and audio content; computer hardware for telecommunications purposes, namely, a digital interface connecting home content accessing devices with a global computer network over a hybrid fiber coaxial network; electronic hardware and software computer interfaces for connecting home content accessing devices with a global computer network over a hybrid fiber coaxial network; fiber optic network equipment, namely optical switches, optical transceivers, wavelength division multiplexing (WDM) combiners, WDM splitters, and WDM selectors for using rf signals in the television bandwidth; computer hardware, namely, optical transmitters, receivers, coaxial fibers, rf amplifiers, quadrature amplitude/phase modulation modems, and amplitude/phase modulators for enabling telecommunications over a hybrid fiber coaxial network." The application was published on December 28, 2001. In the time between the filing of the application and its publication, Advent Networks, which had used the trade name Advent Networks since 1999, used its ADVENT NETWORK mark on product in interstate commerce in at least as early as January 3, 2001. Burt Decl. ¶ 2.

Nonetheless, Recoton opposed Advent Networks' application for the mark ADVENT NETWORKS, relying only on its existing registration for the mark ADVENT. Notice of Opposition ¶ 1. The registration that Recoton relies on its opposition for the mark ADVENT,

Registration No. 1,008,947, covers "audio equipment, namely, microphones, microphone preamplifiers, frequency balance controls, noise reduction units and loudspeakers" and "tape decks and accessories therefor, namely, head cleaning tapes and dust covers." *Id.*

On its face, the goods covered by the ADVENT marks Recoton relies on are distinct from those covered by Advent Networks' pending trademark application for ADVENT NETWORKS. Nowhere in its Notice of Opposition or its Motion for Summary Judgement does Recoton even allege, let alone establish, that it owns or uses the ADVENT mark for goods covered by the ADVENT NETWORKS application. Indeed, nowhere does Recoton establish that Recoton and Advent Networks compete for business, directly or indirectly, or that their respective products can be characterized as related or even complementary.

Recoton's ADVENT products are sold to consumers for their audio needs. Alpert Decl. ¶ 2. Indeed, in press releases that it attaches to support its Motion for Summary Judgment, Recoton describes itself as a "consumer electronics company." Kennedy Aff., Attach. F. Further its expressly identifies only that "[a]udio products are offered under the Advent...brand name[s]." *Id.* This characterization of the ADVENT brand comes directly from press releases issued only last year -- *2002*. *Id.* Thus, by its own evidence, the ADVENT brand as presently used by Recoton covers consumer audio products such as speakers, *not* the type of telecommunications infrastructure products Advent Networks offers and sells under the ADVENT NETWORKS mark to cable operators.

Advent Networks does not use, and does not seek to register, its ADVENT NETWORKS mark for speakers of any type or even consumer audio products of any type. Advent Networks is not a consumer-oriented company. Rather, Advent Networks offers and sells its products to the

cable industry. Burt Decl. ¶¶ 2-3. As the company page of the Advent Networks' web site expressly states:

> Advent Networks has pioneered the first business-class IP access platform for the cable industry that operates on unmodified hybrid fiber-coax (HFC) networks. The Ultraband™ system provisions dedicated, switched IP connections that are scalable from 5-40 MBPS per customer . . .. With the Ultraband system, *cable operators* can penetrate the $69 Billion small- and medium-sized business market without building a parallel network or making extensive network upgrades.

Burt Decl. ¶ 7, Ex. A (emphasis added). Indeed, articles written about Advent Networks are directed to cable operators, not consumers. Burt Decl. ¶ 6, Ex. B–F. Cable operators necessarily constitute sophisticated purchasers who will not associate and have not associated Advent Networks with Recoton or its ADVENT brand products. Burt Decl. ¶¶ 4-5. The randomly selected PowerPoint slides of Advent Networks Recoton attached to its summary judgment motion (Kennedy Aff., Attach. H) do not provide any evidence to the contrary. Rather, these slides when viewed in their entirety only serve to confirm the marketplace for Advent Networks goods remains cable operators. Indeed, Advent Networks own web site expressly identifies its "target customers" as "cable operators." Burt Decl. ¶¶ 7, 13, Exs. A, G.

In any event, Recoton significantly does not even acknowledge, let alone explain, the multitude of other ADVENT based marks in use and/or registered as trademarks. For example, ADVENT INX, Registration No. 2591241, is registered to Advent Technology, Inc. for "computer software and instructional manuals sold as a unit for use to display, report, track, calculate, customize and manage financial data through use of electronic, optical and wireless communications networks." Rapinett Decl. ¶ 3, Ex. C (TESS Printout); *see also* Rapinett Decl. ¶ 4, Ex. D (registration 2517374 (ADVENT for computer software for use in the fields of financial management, investment tracking, portfolio analysis, etc.). Evidence of the use of the ADVENT INX mark as well as other ADVENT marks, including the ADVENT mark, can be found at

www.advent.com. By way of example only, a search of the United States Patent and Trademark Office reveals numerous ADVENT based registrations, including ADVENT DESIGN, Registration No. 2162934, for "consultation in the field of computer hardware design and manufacturing owned by Advent Design and use found at www. adventdesign.com; ADVENT, Registration No. 2269106, owned by Rapport Composites U.S.A., Inc. for gold club shafts and use found at www.goldeneaglegolf.com; ADVENT, Registration No. 2210915, owned by Interactive Technologies, Inc. for security alarm systems and use found at www.adventsecurity.com; ADVENT, Registration No. 1537494, owned by American Recreation Company, Inc for "bicycle accessories, namely cycling gloves and use found at www.plaines.com; and ADVENT, Registration 1269658, owned by Lightolier Incorporated for "electrified lighting tracks" and use found at www.lightolier.com, among others. Rapinett Decl. ¶¶ 5-9, Ex. E–I.

A Google Internet search serves to confirm the wide array of ADVENT based marks in use. Rapinett Decl. ¶ 10. There you find such additional uses as www.adventcomputers.com, www.adventair.com, www.adventsys.com and www.adventtech.com, among others. The Internet also reveals consumer products bearing ADVENT brands including the ADVENT mark owned and used by Simpson Door Company for doors for homes and the ADVENT mark used by Advent Computers for personal computers. Rapinett Decl. ¶ 10.

Apparently, Recoton coexists with all these third party registrations and uses without encountering any confusion although certain of these uses can only be viewed as directed to consumers, the same customer base to which Recoton states it directs its ADVENT brand products. Yet, Recoton makes no mention of this coexistence in its Notice of Opposition or Motion for Summary Judgment. Rather, it paints what only can be characterized, at best, as a

misleading picture making it seem that it is the only user of an ADVENT mark, when it plainly is not.

ARGUMENT

I. SUMMARY JUDGMENT MUST BE DENIED WHEN THE MOVING PARTY HAS NOT MET ITS BURDEN OF IDENTIFYING THE UNDISPUTED ISSUES OF MATERIAL FACT OR, ALTERNATIVELY, THE RECORD ESTABLISHES THAT MATERIAL DISPUTED ISSUES OF FACT EXIST.

Section 528.01 of the TBMP expressly provides that "[a] party moving for summary judgment should specify, in its brief in support of the motion, the material facts which are undisputed." Nowhere in its essentially *one paragraph* motion for summary judgment does Recoton specify *any* issue of material fact that is undisputed. Indeed, Recoton appears to want to entirely disregard governing case law in that it fails to cite even one case in support of its motion. Nevertheless, the governing case law recognizes that summary judgment on the record Recoton has presented to this Board is entirely inappropriate.

It is well established that the party moving for summary judgment retains the burden of demonstrating the absence of any genuine issue of material fact. *See* Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986); *Yves Saint Laurent Fashion, B.V. v. Y & S Handbags*, 2002 WL 1359367 at 1 (T.T.A.B. 2002). Here Applicant does not even bother to define how the marks are similar, how the goods of the two parties overlap, how the channels of trade overlap, or how the markets for the parties' respective products overlap, each of which constitute material issues for a finding of likelihood of confusion. Recoton's entire memorandum consists of essentially *one* paragraph alleging the conclusory allegation that the application for the ADVENT NETWORKS mark creates a " 'likelihood of confusion' pursuant to 15 U.S.C. 1052(d)." Motion for Summary Judgment at 1. Yet Recoton does not explain how this allegation constitutes sufficient evidence of record to find on summary judgment a

likelihood of confusion. Further, Recoton fails to address how its mark can coexist with a number of other third party registrations and uses of ADVENT marks without apparent confusion, but somehow apparently results in a likelihood of confusion with Applicant's ADVENT NETWORKS mark. On this ground alone, Recoton has not met its burden in proving that there is no genuine issue of material fact.

In any event, this Board in resolving this motion for summary judgment must give Applicant the "benefit of all reasonable doubt as to whether genuine issues of material fact exist; and the evidentiary record on summary judgment, and all inferences to be drawn from the undisputed facts, must be viewed in the light most favorable to the nonmoving party." TMBP 528.01. *See also Lloyd's Food Products, Inc. v. Eli's Inc.*, 987 F.2d 766, 767 (Fed. Cir. 1993); *Yves Saint Laurent Fashion,* 2002 WL 1359367 at 1. Applicant's evidence of the dissimilarities of the marks, the differences in channels of trade, the sophistication of purchasers of its products, the fact that there has been no actual confusion to date, and the third party uses and registrations of ADVENT marks, necessarily create disputed issues of material fact and more than establish that summary judgment is *not* appropriate here. *See Yves Saint Laurent Fashion,* 2002 WL 1359367 at 1 (denying summary judgment where genuine issues of material fact existed as to similarity of applicant's and opposer's marks, nature and extent of any actual confusion, and similarity or dissimilarity of trade channels); *Lloyd's Food Products, Inc*, 987 F.2d at 768-69 (denying summary judgment where genuine issue of material fact existed regarding third-party use of the mark LLOYD'S).

II. NUMEROUS ISSUES OF DISPUTED MATERIAL FACTS EXIST

It is well-settled that in determining likelihood of confusion under 15 U.S.C. §1052(d), the Board considers the relevant factors set forth in *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 1369-61 (C.C.P.A. 1973). Here the relevant factors necessarily include:

(1) The similarity or dissimilarity of the marks in their entireties

(2) The similarity or dissimilarity of the goods;

(3) The similarity or dissimilarity of channels of trade;

(4) The conditions under which buyers purchase the goods;

(5) The nature and extent of any actual confusion; and

(6) The number and nature of similar marks in use

Each of these factors supports Advent Network's position here that there can not be, and there has been, no likelihood of confusion between Recoton's ADVENT mark and Advent Networks' ADVENT NETWORKS mark.

A. The Marks Differ in Terms of Sight, Sound and Meaning

The similarity of the marks comes from comparing the appearance, sound, connotation and commercial impression of the marks *in their entireties*. *In re E. I. duPont de Nemours & Co.*, 476 F.2d at 1360. Advent Network's mark ADVENT NETWORKS is the only mark at issue in this opposition. Recoton has put into evidence certain registrations that it owns only for the mark ADVENT. Thus, when these marks are reviewed *in their entireties* they necessarily differ in terms of sight, sound and connotation. With the addition of the word "NETWORKS," Advent Networks mark clearly conveys the nature of its goods as pertaining to a network. In contrast, nothing about audio products can be found to be invoked in the ADVENT NETWORKS mark. As a result, the marks create distinct commercial impressions.

Thus, on this factor alone, there remains a disputed issue of material fact.

B. The Dissimilarity of the Goods for Which the Marks Are Used or Are To Be Used.

On the face of the goods descriptions for which Recoton owns registrations for its mark ADVENT and from its own press releases, Recoton owns and uses the ADVENT mark for audio products. Kennedy Aff., Ex. F (January 7, 2002 Press Release: "Audio products are offered under the Advent. . . brand name[s]"; "Advent Always Ahead" Press Release: "The Company also produces and markets audio components, high fidelity loudspeakers, home theater speakers and car audio speakers and components which are sold under the Advent . . .brand name[s]").

In contrast, Advent Networks' products on the face of the goods description of its application do not include audio products and specifically do not include speakers of any type. Rather, on the face of its goods description, Advent Networks sells computer hardware and software for an IP access platform that operates on hybrid fiber coaxial (HFC) networks. As its marketing materials state, its technology is aimed at cable operators to provide a transparent overlay into existing HFC networks enabling dedicated bandwidth at much lower cost than fiber based networks. Burt Decl. ¶ 3. Thus, Advent Networks products simplify traffic management and IP application deployment for cable operators. *Id.* The products simply are not marketed to consumers.[2] *Id.*

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[2] Recoton relies on 3 random pages from a 16 page document publicly available on Advent Networks' web site for the proposition that ADVENT NETWORKS offers a consumer oriented product. Kennedy Aff, Attach. H. Recoton does not explain how these randomly chosen pages support this any overlap with ADVENT audio products. It does not, because it cannot. Advent Networks products are aimed at cable operators, *not* consumers. When read in its entirety, the document Recoton relies on proves only that Advent Networks products properly can not be viewed as aimed at the consumer marketplace. *See* Burt Decl., Ex. G. In any event, Recoton's ADVENT mark coexists with other consumer-oriented products, including alarm systems, home lighting fixtures, computers, house doors, golf shafts and bicycle gloves, apparently without creating any confusion or likelihood of confusion. *See* Rapinett Decl. ¶ 10.

Thus, on this factor as well, there is a disputed issue of fact.[3]

C. The Dissimilarity of the Parties' Channels of Trade

Recoton's consumer and home audio products and Advent Networks technology platform products necessarily travel in different channels. In an office action for a pending ADVENT application, Recoton, in an attempt to distinguish its ADVENT mark from the mark ICS ADVENT cited against its application, acknowledged to the Trademark Office that "Recoton Audio Corporation markets to the 'home and mobile consumer.'" Alpert Decl. ¶ 2, Ex. A. This same distinction applies here and should be viewed as a binding admission on the part of Recoton.

Advent Networks does not market to the consumer. Its products will not be found and are not found in consumer electronic stores whether brick and mortar stores or online stores. Burt Decl. ¶ 3. Indeed, Advent Networks products are directed to cable operators. *Id.* Significantly, articles about Advent Networks have appeared in publications such as *CableWorld* and *XCHANGE*. These are not publications directed to the consumer marketplace. Burt Decl. ¶ 6. Rather, these publications are cable industry, telecommunication industry publications or business publications. Advent Networks provides the technological platform that enables businesses to offer various services to their clients; it does not sell to consumers. Burt Decl. ¶ 3.

Thus, under these circumstances, this factor as well creates a material disputed issue of fact.

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[3] This conclusion is reinforced when you consider the number of coexisting third party trademark uses and registrations consisting of or containing the word "ADVENT." *See* discussion *infra* at 12 to 14.

D. Advent Networks' Customers Are Necessarily Sophisticated Purchasers.

By the nature of the goods it sells and seeks to cover with its application for ADVENT NETWORKS, Advent Networks necessarily offers its products to sophisticated business people. Burt Decl. ¶ 4. Its target market is sophisticated cable operators and its products are bought only after careful investigation. Burt Decl. ¶¶ 3-4. This factor, too, prevents a likelihood of confusion and, at a minimum, creates a material issue of disputed fact. *See L. J. Mueller Furnace Co. v. United Conditioning Corp.*, 222 F.2d 755, 757-758 (C.C.P.A. 1955) (CLIME-MATIC for air-conditioning units and MUELLER CLIMATROL for air-conditioning apparatus not confusingly similar given that purchase of these goods made after careful investigation); *Kiekhaefer Corp. v. Willys-Overland Motors, Inc. et al*, 236 F.2d 423 (C.C.P.A. 1956) (HURRICANE for auto engines and HURRICANE for outboard motors not confusingly similar as goods not purchased casually); *Magnaflux Corp. v. Sonoflux Corp.*, 231 F.2d 669, 671-72 (C.C.P.A. 1956) (MAGNAFLUX for electrical apparatus for magnetic testing of metal articles and SONOFLUX for vibromagnetic inspection instrument not confusingly similar, because goods sold to discriminating purchasers).

E. Advent Networks Has Experienced No Actual Confusion

Advent Networks has been using its trade name, Advent Networks, since 1999. Burt Decl. ¶¶ 2. Moreover, it has deployed its system under the ADVENT NETWORKS mark since at least as early as January 2001. Sunflower Broadband in Lawrence, Kansas and Everest Connections in Kansas City, Missouri are examples of companies in the United States using the ADVENT NETWORKS technology platform. In addition, it has deployed its product to two of the top five cable operators in the U.S. Advent Networks also has sold its system in foreign

commerce. Burt Decl. ¶ 2. Yet, Advent Networks has experienced no confusion with Recoton or its ADVENT brand products. Burt Decl. ¶ 5.

This factor as well defeats the Motion for Summary Judgment by creating a disputed issue of material fact.[4]

F. The Many Third Party Registrations and Uses Provide Further Evidence of Disputed Issues of Material Fact.

Conspicuously absent from Recoton's Motion for Summary Judgment remains any explanation of the impact of other third party uses of ADVENT marks either as registered trademarks or trademarks at common law on Recoton's claim of likelihood of confusion. For example, ADVENT INX, Registration No. 2591241, is registered to Advent Technology, Inc. for "computer software and instructional manuals sold as a unit for use to display, report, track, calculate, customize and manage financial data through use of electronic, optical and wireless communications networks." *See* Rapinett Decl. ¶ 3, Ex. A (TESS Printout); *see also* Rapinett Decl. ¶ 4, Ex. D (Registration No. 2517374 for ADVENT for computer software for use in the fields of financial management, investment tracking, portfolio analysis, etc.). Evidence of the use of the ADVENT INX mark as well as other ADVENT based marks, including the ADVENT mark alone, can be found at www.advent.com. Rapinett Decl. ¶¶ 3-4, Exh. C. Yet, Recoton does not disclose this use or its coexistence with Advent Technology or explain why Advent Technology's use can and does coexist without apparent confusion with that of Recoton's ADVENT mark but that somehow Advent Networks' use remains of concern. It does not because it cannot. Advent Networks' use remains even more distinct given the nature of its goods, the nature of its customers and its channels of trade.

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[4] Other factors remain irrelevant here, since Recoton has not offered admissible evidence as to any other factors.

Beyond Advent Technology's registrations and use of ADVENT marks, the record reveals multitudes of other third parties using ADVENT marks. By way of example only, registered marks include: ADVENT DESIGN, Registration No. 2162934, for "consultation in the field of computer hardware design and manufacturing registered to Advent Design and used at www. adventdesign.com; ADVENT, Registration No. 2269106, registered to Rapport Composites U.S.A., Inc. for gold club shafts and used at www.goldeneaglegolf.com; ADVENT, Registration No. 2210915, registered to Interactive Technologies, Inc. for security alarm systems and used at www.adventsecurity.com; ADVENT, Registration No. 1537494, registered to American Recreation Company, Inc for "bicycle accessories, namely cycling gloves and used at www.plains.com; and ADVENT, Registration No. 1269658, registered to Lightolier Incorporated for "electrified lighting tracks" and used at www.lightolier.com. Rapinett Decl. ¶¶ 5-9, Exs. E–I.

A Google Internet search serves only to confirm this wide array of uses, as well as a multitude of other uses. Rapinett Decl. ¶ 10. The Google Internet search reveals such additional uses as www.adventcomputers.com, www.adventair.com, www.aadventsys.com and www.adventtech.com. The Internet search reveals consumer products bearing ADVENT brands including ADVENT owned by Simpson Door Company for doors for houses, ADVENT for bicycle gloves, ADVENT for golf shafts and ADVENT for computers, among others. *Id.* Apparently, Recoton coexists with all these third party registrations and uses without encountering any confusion, although certain of these uses only can be viewed as directed to consumers.

It is well-accepted that such uses and/or registrations defeat any likelihood of confusion claim here as well. *See Amstar Corp. v. Domino's Pizza, Inc.*, 615 F.2d 252, 259 (5th Cir. 1980)

("The greater the number of identical or more or less similar trademarks already in use on different kinds of goods, the less is the likelihood of confusion."). As the court in *Source Service Corp. v. Chicagoland JobSource, Inc.*, 643 F. Supp. 152, 1 U.S.P.Q. 2d 1048, 1053 (N.D. Ill. 1986), recognized:

> Where numerous producers or providers use similar marks. . . consumer many not be at all sure whose mark they are dealing with. . . . Put differently, if consumers don't have a clear sense of what plaintiff's mark represents, they are unlikely to purchase defendant's product or service thinking it is plaintiff's.

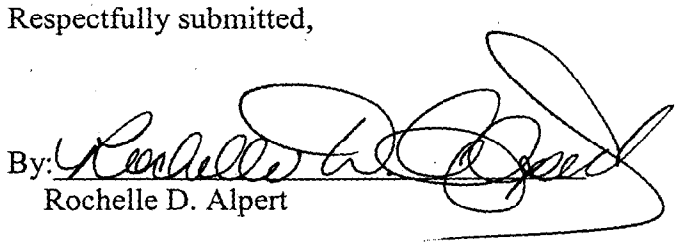
Likewise here, Advent Networks use of the mark ADVENT NETWORKS, if anything, remains more distinct from that of Recoton's use of the mark ADVENT than many, if not all, of these third party registrations and uses for ADVENT marks with which Recoton appears to co-exist without any apparent likelihood of confusion. This fact alone necessarily precludes any finding of likelihood of confusion and belies Recoton's claims in this opposition. In any event, at the very least, the third party uses of record create a disputed issue of material fact that precludes summary judgment.

CONCLUSION

Each of the above reasons, whether considered alone or in combination, supports the denial of Recoton's Motion for Summary Judgment and, on this basis, Advent Networks requests that the motion for summary judgment be denied.

Dated: January 13, 2003

Respectfully submitted,

By: 
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TRADEMARK
Docket No. 032236.9040

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

RECOTON CORPORATION, Opposer, v. ADVENT NETWORKS, INC., Applicant.	Opposition No. 91150749 Serial No. 76/033,895

CERTIFICATE OF MAILING BY EXPRESS MAIL

BOX TTAB - NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Sir:

Express Mail Label No.: EL910818315US

Date of Deposit: January 13, 2003

I hereby certify that the enclosed Applicant's Opposition to Opposer's Motion for Summary Judgment , Declaration of Steve Burt in Support of Applicant's Opposition to Opposer's Motion for Summary Judgment , Declaration of Rochelle D. Alpert in Support of Applicant's Opposition to Opposer's Motion for Summary Judgment, Declaration of Catherine Rapinett in Support of Applicant's Opposition to Opposer's Motion for Summary Judgment (in triplicate) and receipt verification postcard are being deposited with the United States Postal Service Express Mail delivery as "Express Mail Post Office to Addressee" service under 37 C.F.R § 1.10 on the date indicated above, and is address to BOX TTAB - NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

Respectfully submitted,

Jean Canedo

PROOF OF SERVICE BY MAIL
DEPOSIT AT BUSINESS

I, Jean Canedo, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of San Francisco, California. I am over the age of 18 years and not a party to this cause. My business address is Brobeck, Phleger & Harrison LLP, Spear Street Tower, One Market, San Francisco, California 94105.

On January 13, 2003, I served a copy(ies) of the following document(s):

1) Applicant's Opposition to Opposer's Motion for Summary Judgment;

2) Declaration of Steve Burt in Support of Applicant's Opposition to Opposer's Motion for Summary Judgment;

3) Declaration of Rochelle D. Alpert in Support of Applicant's Opposition to Opposer's Motion for Summary Judgment;

4) Declaration of Catherine Rapinett in Support of Applicant's Opposition to Opposer's Motion for Summary Judgment

5) Certificate of Express Mailing

by placing them in a sealed envelope(s) addressed as follows:

Attorney	**Party(ies) Served**
Loan B. Kennedy Vice President and General Counsel RECOTON CORPORATION 2960 Lake Emma Road Lake Mary, Florida 32746	Opposer

I placed the sealed envelope(s) for collection and mailing by following the ordinary business practices of Brobeck, Phleger & Harrison LLP, , California. I am readily familiar with Brobeck, Phleger & Harrison LLP's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence (with postage fully prepaid) is deposited with the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 13, 2003, at San Francisco, California.

Jean Canedo

Jean Canedo